

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 523 of 2004()

AGAINST THE JUDGEMENT/ORDER IN CRLP.194/2004 Dated 11/03/2004
CC.198/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,
PERINTHALMANNA
.....

APPELLANT: COMPLAINANT

PRESIDENT, KERALA VYAPARI VYAVASI
EKOPANA SAMITHI, MELATTOOR UNIT, REPRESENTED BY
K.ABDUL MAJEED, VICE PRESIDENT, KERALA VYAPARI
VYAVASAI EKOPANA SAMITHI, MELATTOOR UNIT

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: ACCUSED AND STATE

1. T.UNNIKRISHNAN S/O. KRISHNAN NAIR,
THADATHODIYIL HOUSE, KIZHAKKUMPADAM, MELATTOOR,
MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31

BY ADV. SRI.K.RAMAKUMAR
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 523 of 2004

Dated this the 7th March, 2007.

J U D G M E N T

The complainant before the lower court in C.C.No.198/2002 is the appellant. On dishonour of Ext.P3 cheque, and non payment of the amount covered by it, on demand, has resulted in the filing of the complaint. According to the first respondent, accused, he was the subscriber to the chit conducted by the appellant association. On bidding the amount, he issued 8 blank cheques as security for the instalment amounts due from him to the appellant association. One of such cheques is Ext.P3. The amount stated in Ext.P3 do not reflect the actual amount due to the complainant. PW.1 is the Vice President of the appellant Association. It was contented that the Vice President was not authorised, as per the bye-law of the association, to conduct the case. However, PW.1 denied the suggestion and relied on Ext.P7 resolution passed by the committee authorising PW.1 to conduct the case.

2. I have gone through Ext.P7. It is a resolution passed by the committee. The bye-law is not produced before me. Therefore, I am unable to come to the conclusion whether the Vice President is authorised to conduct the case, on behalf of the President

or not. However, during the cross examination of PW.1, he admitted that the amount remitted by the accused towards the chit cannot be stated, unless he verifies the accounts maintained in the office. Neither during the examination, nor after his examination, the accounts were produced before the court below. Hence, the court came to the conclusion that the accused cannot be held liable to pay an amount of Rs.3,17,080/= under Ext.P3 cheque, and acquitted the accused.

3. DW.1 is the office manager of the association of the complainant. He deposed that the cheque could be received as security. I agree that even if a cheque is issued by way of security, it is covered under the 'other liability', as per Section 138 of the Negotiable Instruments Act, in short 'the Act', and, therefore, an offence under Section 138 will lie, unless the contrary is proved. But no contention is taken in the complaint that there was non-payment of the instalment amount due from the accused on the chit, which he bid, and, therefore, the cheques given as security were used to proceed against the accused. On the other hand, the statement in the

complaint is that amount, as stated in Ext.P3 cheque, is due to the complainant Association from the accused. That was the reason why the court below has disagreed with the evidence of PW.1.

4. The learned counsel appearing for the appellant submits that the appellant may be given an opportunity to adduce further evidence and to produce the accounts maintained by the complainant Association, as well as to produce the bye-law, to establish that the Vice President can represent the President through a resolution that may be passed by the committee.

5. In the above circumstances, in order to facilitate both sides to adduce evidence, according to the law, I set aside the impugned judgment, dated 23.1.2004, and restore C.C.No.198/2002, on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna.

6. The parties shall appear before the court below on 17.4.2007.

7. The learned Magistrate shall give an opportunity to both sides to adduce further evidence, and on appreciation of the same, the case shall be disposed of, within four months from the date of appearance of the parties.

Criminal Appeal is allowed as above.

**J.M. JAMES,
JUDGE**

nj.